

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

BERNARD C. JERRY-EL,)	
)	
)	CIVIL ACTION NO. 3:16-253
Plaintiff,)	
)	JUDGE KIM R. GIBSON
v.)	
)	
JOHN E. WETZEL, et al.,)	
)	
)	
Defendants.)	

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

The Magistrate Judge filed a Report and Recommendation on March 19, 2018, ECF No. 72, recommending that Doctor Tretter's motion to dismiss, ECF No. 19, Doctor Salmeh and Doctor DeFelice's motion to dismiss, ECF No. 38, and the Pennsylvania Department of Corrections defendants' motion to dismiss, ECF No. 36, be granted without leave to amend the complaint.

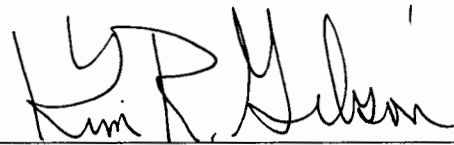
The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had fourteen days to file written objections. Plaintiff filed timely objections, ECF No. 76, which I have reviewed *de novo* and accept and reject in part.

After *de novo* review of the record, the Report and Recommendation, and the timely objections thereto, the following order is entered:

AND NOW, this 6th day of April, 2018, it is

ORDERED that Doctor Tretter's motion to dismiss, ECF No. 19, Doctor Salmeh and Doctor DeFelice's motion to dismiss, ECF No. 38, and the Pennsylvania Department of Corrections defendants' motion to dismiss, ECF No. 36, are granted. The Report and Recommendation is adopted in part as the opinion of the Court insofar as it recommends dismissal without leave to amend the complaint against Doctor Tretter, Doctor Salameh, and Doctor DeFelice, and dismissal without leave to amend any claim under the Americans with Disabilities Act. However, the first two sentences of the paragraph beginning on the bottom of page 11 of the Report and Recommendation ("Allowing repeat amended complaints . . .") are not adopted by the Court. Furthermore, the Report and Recommendation is rejected as to its recommendation as to leave to amend the Eighth Amendment claims against the Pennsylvania Department of Corrections defendants. Leave to amend as to those defendants is granted because it does not appear that amendment would be futile. An amended complaint shall be filed on or before May 31, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Kim R. Gibson', written over a horizontal line.

KIM R. GIBSON

UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF and by U.S. Mail to:

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